

RECEIVED  
D.C. OFFICE OF ZONINGApril 15/2012  
Case No. 11-13

2012 APR 17 AM 11: 27

Chairman Anthony Hood  
District of Columbia Zoning Commission  
441 4<sup>th</sup> Street NW, Suite 210S  
Washington, DC 20001

Dear Chairman Hood,

This letter shall serve as our final submission to the Zoning Commission related to the above referenced matter. In it, I summarize the second of two meetings that occurred between the developer and me to discuss the impact of this development on our son, Peter. Furthermore, because the developer was unwilling to discuss any alternatives to this proposed development which would mitigate the anticipated adverse health impacts on the community, including our son, we continue to oppose this proposed development, and I offer conditions and supporting rationale for them.

As you know, at your request, the developer met with my husband and me on March 27, 2012. We summarized that meeting in our letter to you dated April 2, 2012. To recap briefly, we explained why we object to this project and specifically the anticipated health consequences to not only Peter, but to all immunosuppressed members of the nearby community stemming from the developer's proposed overuse of the St. Matthews property. The proposed development is overly intensive in four respects: height, density, setbacks, and open space.

At the first meeting, we asked if the developer would be willing to discuss reductions in any of these aspects of the development. Unfortunately, the developer's representative indicated at this first meeting that he was without authority to negotiate any reduction in the intensity of the proposed development. However, we agreed to a second meeting upon the condition that the developer would come to the meeting with a proposal that addresses our family's concerns. This second meeting occurred on April 10, 2012.

In attendance at the second meeting were a) my husband and I with our attorney, b) Debbie Krause (also with party status, and consolidated with me), c) Bill Byrd (the son of our neighbors William D. Byrd and Alice Oakley-Byrd, both elderly and not well enough to come to the meeting themselves) – the elderly Mr. and Mrs. Byrd have provided written testimony to the Zoning Commission in this proceeding, and d) Dr. Gerry Miller, another neighbor who suffers from a chronic immune system disorder. The developer was represented by Josh Dix of Trammel Crow and his attorney, and Pastor Phil Huber. Unfortunately, it was clear even before the second meeting started that the developer was not willing to discuss any reduction in the proposal or other mitigative measures. Instead, the developer insisted that Chairman Hood merely required us to meet for the purpose of communicating our concerns. They told us there was no requirement to take our concerns into consideration or offer anything in mitigation of the anticipated health

ZONING COMMISSION  
District of Columbia  
CASE NO. 11-13  
ZONING COMMISSION  
EXHIBIT NO. 98  
CASE NO. 08-06  
EXHIBIT NO. 98

consequences of this project. Obviously, my husband and I were very disappointed in the developer's position at this second meeting, which ended very quickly after it started.

Because of our concern that the proposed development will result in a health hazard to members of the nearby community who are immunosuppressed or otherwise suffer from compromised immunity, including our son Peter, and because the developer was unwilling to discuss any mitigation of the anticipated health consequences, including specifically a reduction in intensity of the development in terms of decreased density, reduced height, increased open space, or increased setbacks, my husband and I have no choice but to oppose this development.

The St. Matthews church was demolished because it was plagued with toxic mold. At our meeting March 27<sup>th</sup>, Mr. Josh Dix of Trammell Crow conceded the Church had a serious mold problem in the roof that rendered it unusable along with other factors. While the applicant in its written statements to the ZC on April 9<sup>th</sup> said we presented no evidence of mold at the site, their own representative, Mr. Dix, confirmed otherwise. In our earlier submission, we noted that the November 2004 edition of the neighborhood newspaper, the "Southwester," extensively quoted Pastor Huber. The article stated that the church closed because of mold and decay. Pastor Huber personally offered me a tour of the sanctuary before it was demolished but he warned me the mold was a health hazard.

Both the CDC and EPA recognize that mold – not just toxic mold - is a serious public health issue. A CDC report from 2008 shows that the risk groups for mold exposure is broad. They include, but are not limited to those under 12, those over 65, those with respiratory conditions, asthma, allergies, pregnant women, the immunosuppressed, transplant recipients and cancer patients. According to US 2010 Census data, 19% of our neighborhood is made up of retirees and 7.4% are immunosuppressed. The CDC is very clear in that two things primarily cause mold infestation: moisture and lack of direct sunlight.

As illustrated by the attached Civil War era maps obtained from the Library of Congress, the St. Matthews property sits at the site of the former James Creek estuary and the subsequent canal. James Creek has been filled and rerouted in this area since the 1860s, but the ground remains extraordinarily wet. It seems quite likely that the original St. Matthews church was so contaminated with toxic mold because of this wet ground. This wet ground is also a primary reason we are concerned that the future overuse of this land will result in a health hazard to the nearby community. We believe the wetness of the ground at this development site is very unique and renders the site inappropriate for consideration of a PUD which will minimize the required setbacks and open spaces, maximize the shadows cast by the building, and allow for the overuse of the property through increased residential density.

The shadows generated by an 11-story building on the St. Matthews property will obviously decrease the amount of sunlight on the lot and in the area. Reduced setbacks

and minimized open spaces will likewise reduce the sunlight that makes its way to the soil on the St. Matthews property. These factors will also reduce the number of trees and green spaces through the area resulting in decreased air quality, reduced air circulation through the area and particularly along the soil, and resulting in moisture accumulation, reduced moisture evaporation, and a breeding ground for toxic mold.

As Col. Michael Krause, who was consolidated as a party with our family, testified at the hearing that he was president of the Carrollsburg Square Condominium Association (CSCA) in the late 80's and early 90's. During that time, there were numerous backups of the drainage system due to the high water table. In fact, there were at least three such backups according to his records.

Peter, and also our neighbors, William D. Byrd and Alice Oakley-Bryd, both elderly and Gerry Miller, another neighbor who suffers from a chronic immune system disorder, can live in safety because the area in which they have lived is subject to appropriate zoning. We believe the purpose of zoning and land use regulation is to provide that residents of an affected area can live their lives in safety, and without such safety being compromised by new developments.

We submit that if the Zoning Commission adheres to the existing principles applicable to the subject area, then such a result will be realized. As a preliminary matter, we call attention to the following specific provisions.

#### **Comprehensive Plan**

**Policy LU-1.4.1 Infill Development.** "Such development should complement the established character of the area and should not create sharp changes in the physical development pattern."

The proposed development most emphatically does not "complement the established character of the area."

The proposed development is contrary to Policy UD-2.2.4 and does not establish "gradual transitions between large scale and small scale development" -- rather it envisages a most abrupt transition.

The proposed development is contrary to Policy UD-2.2.7 as it envisages an "overpowering contrast of scale, height and density."

The generally applicable land use regulations would allow a reasonable use of this St. Matthews lot, while preserving the health of the neighborhood. As a preliminary matter, we must presume that the land is designated a neighborhood conservation area because it is unsuitable for use for high density housing or other purposes. Perhaps it was given this designation, in part, because the ground is so wet and would tend to harbor and breed mold, especially in light of the history with the first St. Matthews church building.

Furthermore, we must assume that the generally applicable setbacks, open space, height, and density that would be permitted or allowed on this site by right were made applicable because they would tend to mitigate the health consequences that would otherwise result from the overly intensive use of this land. The proposed development as reflected in the PUD proposal turns these safeguards on their head, and will result in a level of intensity of development that will lead to proliferation of toxic mold on the grounds.

We would ask the Zoning Commission to note that we object to the level of intensity of this proposed development, but that perhaps, if a more modest development were proposed, we might not object. Our concern is that the high intensity of development proposed will result in a health risk to certain members of the community. However, we understand that a more modest proposal might not result in the same health risk, depending on factors such as the proposed extent of ground cover, the proposed height and setbacks of the buildings, and the amount of green space proposed. The applicant has given no reasonable explanation to justify such a radical departure from the existing zoning. A PUD is a zoning tool that is supposed to preserve the existing trees and increase the green space as a prerequisite for approval. But this PUD reduces the green space and almost certainly ensures the destruction of old growth trees.

Although, obviously, our primary concern is for the health and wellbeing of our son, Peter, he is but one of many immunosuppressed individuals in the area who would be affected by toxic mold at this site. We invited Mr. Byrd (as a proxy for his parents) and Mr. Miller to our second meeting with the developer in an effort to demonstrate that the anticipated health consequences of developing so intensively on this uniquely unsuitable lot was a concern for a wide cross-section of the community, well beyond just our concern for our son. Mr. Miller and Mr. Byrd's parents all live at Carrollsburg Square. Of course, because the CSCA board of directors took a favorable position to the proposed PUD despite the overwhelming percentage of its membership who opposed the development, their own association at the hearing did not adequately express the Byrds and Dr. Miller's concerns.

As indicated in the letter which we submitted dated March 14, 2012 from Peter's transplant hospital, the Children's Hospital of Pittsburgh, the risk of infection to immunosuppressed individuals from toxic mold is greatest when these individuals are exposed to aerosolized molds, as in nearby construction activities and excavation sites. However, the threat to these individuals is not limited to during construction periods. Aerosolized pathogens may result from any environment that is conducive to the growth of these molds. And, as indicated in the Children's Hospital letter, there is a 56% mortality rate for transplant recipients who acquire certain mold infections. The proposed development at this site, with reduced open space, reduced setbacks, and increased building height and therefore shadows, and decreased sunlight, will increase the level of mold in this neighborhood, and therefore will present an infection risk to the immunosuppressed population in the vicinity of the proposal. This is specifically because the ground is so wet, being at the former James Creek estuary, which has been rerouted and filled, but remains very wet in this area. As one example, according to the applicant's own shadow study, the CSCA townhouses on M Street will lose all their

morning sunlight. This site is simply not appropriate for consideration as a PUD at the proposed level of intensity of development.

In its findings of fact and law, the applicant appears to mislead the zoning commission on several fronts. They claimed to have worked with the community. The reality is that they worked with parties in support and ignored dissenting voices. They knew about our family. My husband, John Hayes, a civil engineer with the National Guard personally attended at least two of the developer's meetings. On at least one occasion, he told Mr. Dix that the project was too big because of the lack of direct sunlight that would kill the trees and provide unacceptable health risk.

The ANC 6D's statement of support for the project is tepid at best. It states "the building makes a huge leap from the zoned R-3 height and does not adhere to prevailing setback on the south side of M Street." It complains about strong armed tactics by "the dogged insistence of the Office of Planning to maximize massing, simply for the sake of massing, causes a good amount of poor planning when all is said and done....at the very least it does not fit with the current makeup of the area in question."

The ANC 6D statement continues with specifics "one huge negative is the massing of this project with its additional height and less setback as compared to surrounding buildings...the loss of US capitol views by most in the River Park cooperative homes and 240 M street (CAC) may well cause a decline in property values..." As we have shown to the zoning commission, the membership of both condo associations (CAC and CSCA) that about the project are opposed.

As a civil engineer and Federal design and construction manager, Mr. Hayes believes, as outlined in his written statement to the ZC, that the applicant has attempted to minimize the fact that they require not only a PUD approval, but they need a significant re-zoning to the CR zone in order to achieve this development.

The applicant claims they have a matter of right to build to a Floor Area Ratio (FAR) of over 7. This is not the case --- as defined, the R-3 zoning limits shall not exceed the FAR prescribed for R-5-B, which is a FAR of 1.8. The applicant's statement in their submission that because they are building to slightly over a FAR of 4 they are within their matter of right is factually inaccurate. They are more than doubling the allowable density and exceed the allowable maximum FAR for R-5-D (see definition below)

For clarification, the only matter of right use permitted in an R-3 Zoning District area are:

320.3 The following uses shall be permitted as a matter of right in an R-3 District:

(a) Any use permitted in an R-2 District under § 300.3; and

(b) Row dwelling.

SOURCE: §§ 3103.1, 3103.2, and 3103.3 of the Zoning Regulations

Mr. Hayes states that the District of Columbia Future Land Use map, which is not legislation and only guidance, shows the entire CSCA lot plus the church lot combined as Medium Density Housing. The planning guidance -- as communicated in the Future Land Use Map-- is just general planning guidance. It is to be interpreted broadly. However, it is to be presented broadly because the city (federal) ordinance clearly states and directs you back the DC Zoning map for lot specific allowances for actual design. In the Carrollsburg Square and church lot, the overall planning goal of medium density housing is achieved because the lots were divided between moderate density (R-3), and high density (R-5-D) zoning districts for a combination that equates to a medium density neighborhood. But, the lot in question, St Matthews, is in an R-3 zoning district in the DC zoning map-- Moderate Density Housing. Medium density is achieved by averaging all the zoning district lots in the area, including the St Matthews.

**Definition: Moderate Density Residential:** This designation is used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings. Zoning Code Section 225.4

R-3 permits matter-of-right development of single-family residential uses (including detached, semi-detached, and row dwellings), churches and public schools with a minimum lot width of 20 feet and a minimum lot area of 2,000 square feet for row dwellings, 30 feet and 3,000 square feet for single-family semi-detached dwellings, 40 feet and 4,000 square feet for all other structures and 120 feet and 9,000 square feet for schools, a maximum lot occupancy of 60% for row dwellings, churches and schools, 20% for public recreation and community centers, and 40% for all other structures, and a maximum height of three (3) stories/forty (40) feet (60 feet for churches and schools and 45 feet for public recreation and community centers). Rear yard requirement is twenty (20) feet.

**Definition: Medium Density Residential:** This designation is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone districts are generally consistent with the Medium Density designation, although other zones may apply. Zoning Code Section 225.5

**Definition: High Density Residential:** This designation is used to define neighborhoods and corridors where high-rise (8 stories or more) apartment buildings are the predominant use. Pockets of less dense housing may exist within these areas. The corresponding Zone districts are generally R-5-D and R-5-E, although other zones may apply. Zoning Code Section 225.6

R-5-D Permits matter-of-right medium/high density development of general residential uses, including single-family dwellings, flats, and apartment buildings, to a maximum lot

occupancy of 75% (20% for public recreation and community centers), a maximum FAR of 3.5 and a maximum height of ninety (90) feet (45 feet for public recreation and community centers). Rear yard requirements are not less than fifteen (15) feet.

**Definition:** The Southwest Waterfront is a 45-acre area along the Washington Channel, stretching three quarters of a mile along Maine Avenue from the Tidal Basin to Fort McNair. The area includes the Washington Fish Market, portions of East Potomac Park, a boating/residential community at Gangplank Marina, restaurants and entertainment uses, and parking areas.

Mr. Hayes includes the last definition for The Southwest Waterfront from the same document because this is not our neighborhood, nor the lot in question. The applicant incorrectly implies that the planning factors for the waterfront along the river are the existing and allowable legal zoning for the lot in the neighborhood conservation area that is zoned R-3. The definition for the South West Waterfront as an area is clearly defined. It does not include this lot. Therefore the definition of another zoning district is not relevant as to the allowable zoning, or planning guidance, for this lot parcel.

As a transplant patient, our son Peter is also a special needs child. We include the relevant DC regulations for housing those with special needs.

#### **514 H-4 HOUSING THOSE WITH SPECIAL NEEDS Rule 10-A514**

514.1 Among Washington's 575,000 residents are thousands of people with special needs who require targeted help finding, paying for, and maintaining affordable housing. These individuals and families include the homeless, seniors, people with physical disabilities, people living with HIV/AIDS, people with mental illness, adults reentering the city from correctional facilities, and youth being discharged from foster care and the juvenile justice system. Residents with special needs are particularly vulnerable to displacement and housing hardship. They often lack the income needed to afford safe, decent housing and the services that will help them lead normal lives in the community. 514.1

For the reasons set forth above, we urge you to deny the requested PUD approval for this proposed development. Nonetheless, if you are inclined to grant the approval, we would ask that you impose the following conditions on the approval:

1. PUD is limited to the construction of a new St. Matthews' sanctuary and mixed income townhouses similar to Capper-Carrollsborg development which is consistent with the lot's R-3 zoning designation. Per statute, the PUD process shall not be used to circumvent the intent and purposes of the zoning regulations, nor result in action that is inconsistent with the Comprehensive Plan (which refers back to zoning regulations for specific lots).
2. PUD height and density is in accordance with a neighborhood conservation area designation and consistent with the 2006 Comprehensive Plan chapter 19 that refers you back to zoning map for allowable construction. Under 2405.1 PUD

standards: No building shall exceed the maximum height permitted in the least restrictive zone district within the project area as indicated in the following table. Since this site only has one zone, and it is zoned R-3, the least restrictive zone is R-3. The maximum allowable height per the table therefore is 40 feet. The board may allow a 5% variance with good reasoning, so potentially 42 feet. Additionally, the maximum allowable FAR for a PUD in an R-3 zoning district is 0.6. Again a 5% variance is allowed.

3. The PUD does not result in the loss of direct sunlight to the Carrollsburg Square Condominium Association (CSCA) or Carrollsburg, a Condominium (CAC) properties.
4. The PUD does not destroy existing trees/green space. The trees must be handled in accordance with the Urban Forestry Administration and DDOT: Construction Guideline for Tree Protection. This is a pre-requisite for PUD approval by the board per DC Comprehensive Land Use Rules and the Planned Unit Development standards.

A trust fund of \$200,000 will be established to monitor the trees for 10 years and to pay for their maintenance. Lost trees, within the 10 year period, will incur a penalty based on accepted market value to be paid out by the trust fund to CSCA. Individual tree value will be assessed prior to construction. Balance of the fund will be returned to applicant at the end of 10 years.

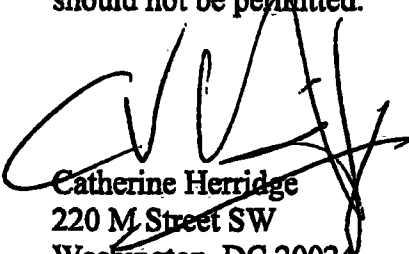
5. The PUD will include at least 5000 square feet of open space that is not gated for any portion of the day.
6. The PUD will be set back from the CSCA property line on the 3<sup>rd</sup> street SW extension by at least 30 feet and will fully meet the requirements for setback on M Street SW as well as landscape and open space requirements per existing zoning requirements.
7. The applicant will conduct a full environmental impact study, by a group agreed to by the applicant and the parties. The cost of the study will be borne by the applicant as well as any remediation, not limited to mold that is required. If the study finds the lot unsuitable or with drainage problems the PUD must be modified to address the study issues to the satisfaction of the parties.
8. A trust fund will be established for future costs associated with mold and other environmental degradation that will also include associated medical costs or relocation/displacement costs of CSCA and CAC residents. The size of the trust fund will be determined by an independent body agreed to by the applicant and the parties.

At the ZC hearing March 19, the applicant, Pastor Huber, was asked by Chairman Hood to meet with our family. Pastor Huber publicly assured Mr. Hood, and members of the

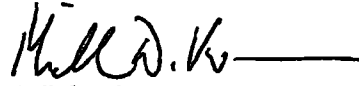
commission, that "I look forward to that conversation to make sure every child in our community is safe and no one is adversely affected or put in danger by our project."

Despite those public assurances, the applicant has effectively given our family, the neighborhood and the ZC an ultimatum. When it comes to the PUD, it is their way or the highway.

The facts that the PUD guidance limits a PUD in an R-3 Zone to 40 feet of height and a FAR of 0.6 seems not to inhibit the applicant's demand of a FAR exceeding 4.0 and over 120 feet in height. Clearly they are asking for a gross overuse of a unique site and this should not be permitted.



Catherine Herridge  
220 M Street SW  
Washington, DC 20024



Michael Krause  
252 M Street SW  
Washington, DC 20024



Fox News Channel Washington D.C. Bureau  
400 North Capitol St. NW  
Suite 550  
Washington, D.C. 20001

Date: April 17

Total Number of pages: 10  
(including cover sheet)

To: Zohing Gumbiroh  
Secretary

Attn: Sharon or Donna

Fax Number:  
( 202 ) 727-6072

Office Number:  
( )

From: C. Heridge

Fax Number: 202-824-6426

Office Number:

RECEIVED  
D.C. OFFICE OF ZONING  
2012 APR 17 AM 11:26

Remarks: Heridge / Krause conditions Case No 11-13